

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

BENJAMIN GRAHAM,

Plaintiff,

v.

WELDINGHOUSE, INC.,

Defendant.

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CIVIL ACTION NO. 2:11-CV-00280


**ORDER GRANTING PLAINTIFF LEAVE
TO FILE AMENDED RESPONSE AND EXHIBITS**

Before the Court are Defendant's motion for summary judgment and Plaintiff's response (D.E. 23 & 29), Defendant's motions to strike Plaintiff's affidavits and exhibits (D.E. 31 & 32), and Plaintiff's motion to amend or correct evidence (D.E. 37). The Court finds that Plaintiff's response to Defendant's motion for summary judgment failed to comply with FED. R. CIV. P. 56(c)(1)(A), which requires a party asserting that a fact is genuinely disputed to support that assertion by "citing to particular parts of materials in the record." Additionally, the Court finds merit with many of Defendant's objections to Plaintiff's exhibits and affidavits.

On summary judgment, the burden is on the movant to find triable fact issues in the record, not the Court. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006) ("Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment."). "When evidence exists in the summary judgment record but the nonmovant fails to even refer to it in the response to the motion for summary judgment, that evidence is not properly before the district court." *Malacara v. Garber*, 353 F.3d 393, 405 (5th Cir. 2003).

Under FED. R. CIV. P. 56(e), the Court has several options available to it when a party fails to properly support an assertion of fact as required by Rule 56(c). One option is to provide the party an opportunity to properly support or address the fact. The Court grants Plaintiff leave to file an amended response and exhibits. Plaintiff's amended response and exhibits are due by **Friday, July 13, 2012.**

ORDERED this 10th day of July 2012.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE